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ABSTRACT

The specific concern in this study is to consider the nature, social significance, and consequences of syntactic variation in the question forms used by judges when taking guilty pleas from criminal defendants. Nine judges from a court of general jurisdiction in Arizona were observed and tape-recorded while presiding over several procedures that involve the judge talking a great deal. The particular data presented here involved the change of plea. Generally, it was observed that topics were handled in a variety of syntactic procedures, and that the most legally significant portions varied least. At the same time, there was variation among the judges in their handling of the same procedure. It appears that the choice of question form made by the judge has considerable patterned and predictable effect on the sequential structure of the discourse that follows. The type of factual basis resulting from one tactic rather than the other may have been quite deliberately intended by the judge, although the choice of one question form over another might have been unconscious. The analysis of these discourse events suggests the possibility of establishing a correlation between syntactic variation in question form with both general social dimensions and dimensions that are specific to the particular institutional context in which individuals are engaged in interaction. (AMH)

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SYNTACTIC VARIATION IN JUDGES' USE
OF LANGUAGE IN THE COURTROOM

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SYNTACTIC VARIATION IN JUDGES' USE OF LANGUAGE*

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The purpose of this paper is to consider the nature of syntactic variation in courtroom discourse, and to examine the contribution of such variation to the social meaning produced through the process of face-to-face interaction.

Sociolinguists and social psychologists have demonstrated a variety of ways in which speech conveys social information about the speaker (Trudgill, 1974; Labov, 1964; Giles and Powesland, 1975). The studies that show how frequency of use of alternate phonological variables conveys information about social class are among the clearest and most elaborated examples of the social meaning conveyed by linguistic variation. Labov (1972) has also been able to identify alternate syntactic features that convey social meaning. The study of syntactic phenomena has not flourished, but there have been some interesting efforts to explain the contribution of particular syntactic devices in accomplishing particular kinds of social meaning (e.g. Irvine, 1974; Sherzer, 1974; Ervin-Tripp, 1976).

The two speech activities that have been subject to more systematic syntactic analysis are the activities of questioning and directing. In both those activities variations in the form of the speech act have been related to the notion of degrees of coerciveness of the speech (Lakoff, 1973; Danet and Kermish, 1978; Kirksen, 1977). Thus, for example, "Bring me my book," is thought to be more coercive than "Would you bring me my book?"

In syntactic terms, that difference in social meaning is expressed by a choice between the imperative and interrogative moods. The

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difference between the two moods can be described as a difference between the presence and absence of Auxiliary Verb and Subject (e.g. "Would you . . .").

My concern in this paper is to consider the nature, social significance and consequences for discourse structure of variation in the question forms used by judges when taking guilty pleas from criminal defendants. So much of courtroom interaction consists of question and answer sequences that attention to the questioning process is necessary for an understanding of legal uses of language. And recent treatments of questioning (e.g. Goody, 1978b; Robinson and Rackstraw, 1972; Danet and Kermish, 1978; Keenan, Schieffelein and Platt, 1978) allow for a comparative analysis of the nature and functioning of questioning. Before discussing the syntactic forms of questioning in the courtroom, however, some general comments on question and answer sequences are necessary.

1. Question and Answer Sequences

In American English there are basically two ways in which questions are marked as questions. First, they may be marked by the prosodic device of gradual raising of pitch at the end of an utterance. Second, questions are marked by an inversion of the positions the Subject and the first Auxiliary Verb hold in statements. I refer here to the contrast between "John will have to leave," and "Will John have to leave?"

A further distinction is commonly made in syntactic analysis between 'Yes-no questions' and 'Wh-questions' (e.g. Culicover, 1976). In addition to the Subject-Aux inversion that generally marks questions, Wh-questions are introduced by what, who, when, where, why, how and which.

Actual responses to both Yes-no questions and Wh-questions are quite variable, if one examines discourse from diverse social contexts. At the same time, the form of answers is thought to be highly predictable from the form of the question. The view that answers to Yes-no questions can be predicted exists because in some sorts of encounters that are common in our society, the form of the response is highly predictable.

The Yes-no question is sometimes treated in the sociolinguistic and linguistic literatures as calling for or requiring a yes or no answer,

partly because the question is propositionally complete. Wh-questions are characterized as propositionally incomplete, and as demanding the completion of the proposition (Goody, 1978a:23).

Danet and Kermish's (1978) research on courtroom questioning indicates that some forms of questioning are generally perceived as more coercive than others, in that they constrain the syntactic form of the response to a greater degree. It is important to bear in mind, however, that the analysis of Anglo-American questioning has focused on the use of questions in what Goody (1978b) refers to as the 'control mode.' In other words, analysis has focused on situations where the questioner has higher status than and control over the answerer, as in the focus on questions asked of children by their mothers and questions asked of witnesses by lawyers. Thus far we have looked less at the questioning by those in the subordinate position, with attention to coercion.

Nevertheless, in the questioning done by those in the position of greater power and authority, there is often a close syntactic relationship between the form of the question and the form of the answer.

In courtroom interaction there are several sorts of responses to Yes-no questions that display such a relationship.¹

- (1) Judge: Has uh, anyone coerced you in any way, or forced you to enter a plea of guilty?

Defendant: No.

E2(3)-32

- (2)(a) Judge: Mr. Gelton, there's been given me a uh (2 sec.) plea agreement. Have you had a chance to read this document and to--

Defendant: Yes I have.

E2(3)-26

- (b) Judge: And, uh (8 sec.) did you make any efforts at all, uh, to uh--notify the owner that uh you had his card?

Defendant: No, I didn't.

E2(3)-29

- (c) Judge: Mr. Mulvaney, is it still your desire to plead guilty to this charge?

¹ The transcription system employed here is a modified version of that used by Sacks, Schegloff, and Jefferson (1974). The code numbers below each discourse example indicate the original source of my data.

Defendant: Yes, it is.

C1(1)-11

- (3) Judge: All right. U and uh--it was, uh not your VISA card. Is that correct?

Defendant: That's correct.

E2(3)-28

The Yes-no question is so named because a question that only reverses the position of Subject and first Auxiliary Verb is thought to dictate a choice between a 'yes' and a 'no' answer. Example (1) illustrates that prediction.

Less commonly, but still quite often, a Yes-no question is answered as in example (2), where with or without a yes or no preceding, the response consists of a Subject, usually a pronoun, followed by an Auxiliary Verb that may or may not be negated as it is in response (2)(b) "No, I didn't." The question form predicts the responses in example (2) as possible responses in all respects except for the presence or absence of the negation. The employment of negation is the only aspect of the form of the response that can be said to be under the control of the defendant, rather than provided by the form of the question.

It is possible to specify the particular syntactic features and operations that are used to produce an answer from the question in example (2). First, the word order is Subject + Auxiliary, a reversal of the Aux + Subj of the question form.

Second, the Auxiliary Verb in the response is the same Auxiliary Verb in the same tense as in the question. Thus, for example, if the questioner asks, "Did you make an effort?" the answerer will not be heard as making an acceptable response or as responding to the question if he says, "I do," or "I was."

Third, unless the Subject of the question is 'You', it will be the same noun phrase or a substitutable pronoun in the answer as in the question, as in (2)(c). If the Subject in the question is 'You', then the Subject in the answer is "I", as in examples (2)(a) and (2)(b).

Fourth and finally, there is no Verb Phrase to the response. The response is, then, elliptical, in that although the verb phrase is missing, the listener can still "retrieve" it because it is a predictable partial copy of the Verb Phrase in the question. Thus we 'know' that the full responses in example (2) would be, "Yes I have had a

chance to read this document," "No, I didn't make any efforts at all to notify the owner that I had his card," and "Yes, it is still my desire to plead guilty to this charge."

If we use the question form as a point of reference, we may say that the verb phrase has been 'deleted' in the answer. There is some question as to whether it is appropriate to apply a term like deletion to such a discourse process, given the nature of the origins of the term in transformational generative theory. To say that the Verb Phrase is deleted implies that the form is incomplete, and that something has been removed. It also implies that the 'sentence' is the basic model for discourse units, when in fact such a notion is problematic.

In addition, the concept of deletion was originally part of a formal model of the organization of the rules constituting abstract linguistic competence, and not a set of instructions for how to produce an actual sequence of the possible utterances that could be produced by the rules.

Nevertheless, the door was opened to the application of the concept of deletion to discourse structure by some of its uses in linguistic analysis. Thus, for example, when the utterance, "Mary went to the store and John went too," was analyzed to suggest that 'to the store' had been deleted from "John went to the store," it was a simple step to then apply the same approach to discourse (e.g. Keenan, 1974; Keenan and Klein, 1975).

Nowadays, the term 'partial copying' is used to refer to processes like the answer production we are concerned with here (e.g. Akmajian and Heny, 1975), so that what was once deleted is now, by implication, simply not copied. But in the sort of answers we are dealing with, it is the intuition of native speakers that the Verb Phrase has been deleted, because all agree on what could be there if more were there.

In addition, sometimes part or all of the Verb Phrase in the question does appear in the answer. Thus, in example (3), the response to "Is that correct?" is "Yes, that's correct," rather than "Yes" or "Yes it is."

Like Yes-no questions, most Wh-questions provide both syntactic and semantic structure that can be copied by the respondent, and that

can be retrieved from the question if only some of the question form is copied.

Those processes in Wh-question and answer sequences can be illustrated by examples from courtroom interaction also:

(4)(a) Judge: All right sir. (3 sec.) And how old are you?

Defendant: Twenty-five. C1(2)-37

(b) Judge: What is your middle name:

Defendant: Bindley. G1(2)-14

In both (4)(a) and (b) the response is not only highly predictable (e.g. a number, a name), but we are able to agree on how to expand the form in a way that would constitute the same response referentially. Thus, in (4)(a) the defendant could also respond with, "I am twenty-five." In (4)(b) the defendant could also say, "My middle name is Bindley."

Part of the predictability between question and answer in example (4) derives from the frequency with which we are asked such questions in our lifetime, and from our awareness of the semantic nature of the habitual response. For that reason, other Wh-questions that are topically equally familiar, but that do not offer an obvious syntactic framework to copy will still get semantically related answers:

(5)(a) Judge: Uh, what kind of education have you had?

Defendant: I went up to twelfth grade. A2(3)-66

(b) Judge: Uh, how much school have you had, sir?

Defendant: Uh, I've got a GED. D1(3)-30

The questions in (5) both offer a partial syntactic framework, for copying. Both invite the respondent to begin an answer with "I have had . . .," but are ambiguous regarding the appropriate structure for the rest of the sentence. And we see that neither defendant uses the offered verb in his response.

Other Wh-questions are more open-ended, inviting the respondent to more freely structure his own response syntactically:

(6)(a) Judge: What type of work do you do?

Defendant: Drywall. But I'm right now in a resident,
uh Project Create therapeutic community.
A2(3)-66

(b) Judge: All right. You were at his house and what happened then?

Defendant: Uh, were there were, uhm, we're drinking this stuff, you know, but earlier in the day then he left, and uhm, I stayed there with uhm (2 sec).

G1(2)-22

There is variation, then, in the extent to which WH-questions provide structure that can be copied in the answer. And generally speaking, the range of syntactic and semantic alternatives suggested by Wh-questions is much greater for answers than that suggested by Yes-no questions.

I have avoided suggesting that interrogative forms compel answers with a particular structure that predictably reproduces or leaves out aspects of the form of the question because the degree of compulsion appears to derive from social rather than linguistic processes. More constraint is imposed by a questioner with more authority. Thus, in courtroom interaction, defendants' responses to judges' questions are overall more closely syntactically related to the questions than judges' responses to the questions of either the defendants or the lawyers:

(7)(a) Judge: Do you have any questions about what restitution means?

Defendant: D'zat, does that mean that whatever wh-whatever () paying for me to pay up for he'd uh--

Judge: Well, let's say that you gave him a black eye when you struck him. And he had to go to the emergency room at the hospital

C1(2)-41

(b) Lawyer: Isn't it limited to the amount of the fine? (6 seconds)

Judge: I'm not sure about that. Let's check under 803-A.

C1(2)-42

In example (7) each questioner of the judge attempts a yes-no question that does not receive any of the responses that such a question predicts; features of the question form are not used in producing an answer.

While some of the coercion of the judge's speech may derive from his authority, some of it is also probably situational and derives from the courtroom setting. The courtroom and the classroom are both examples of situations where question and answer sequences are relatively routinized and role-bound. In general, both the social setting and the role relationship that provide the data on which this analysis is based encourage a close syntactic relationship between question and answer. And as we will see, where coerciveness is high, the influence of the form of the question can go well beyond the immediate response.

2. Judges' Use of Language in the Change of Plea

The data for the analysis in this paper is derived from a study of judges' use of language in the courtroom. Nine judges from a court of general jurisdiction in Arizona agreed to be observed and tape-recorded while presiding over several short procedures that involve the judge talking a great deal. They also agreed to be interviewed about their social and career backgrounds, and their reasons for handling procedures as they did.

The central procedure of interest in the research was the Change of Plea. A change of plea occurs when a defendant who originally pled innocent decides to plead guilty. Virtually all of those who are indicted by the local grand jury and who do not go to trial go through this process, because only pleas of innocent are taken when defendants are arraigned for high misdemeanors and felonies.

The procedure has two primary legal purposes associated with taking a guilty plea. The first is to make sure the defendant is knowingly and voluntarily waiving his Constitutional rights to a jury trial. The second purpose is to make sure that there is a factual basis for the plea--i.e. that the defendant did in fact do the criminal act he is pleading guilty to, and that the state would have substantial enough evidence of the act for the case to "get to the jury" if it went to trial.

An effort was made to tape record a number of instances of the same procedure being carried out by each of the nine judges. In that way syntactic variation across judges and within the sample from a single judge could both be studied. Approximately seventy-five instances of the Change of Plea were tape recorded, and thirty-nine of the pleas that were taped have been transcribed. The transcriptions constitute the data base for the present analysis. The number of pleas transcribed for a single judge ranges from two to seven.

Basically the Change of Plea consists of a series of questions posed by the judge and answered by the criminal defendant in the presence of both the defendant's lawyer and a lawyer representing the State. Although the actual topics covered by the judges vary to some extent, and the order in which those topics are raised also varies, there is a general pattern followed by most judges.

First the defendant is asked if he is really the person named in the criminal charge. A majority of the judges then ask the defendant some questions about his personal background. The questions usually ask for the defendant's age and education. Sometimes the defendant is also asked about his ability to speak, read, and write English, and whether or not he is taking any drugs that would impair his comprehension of the plea process.

Usually the defendant is then asked some questions about the written plea agreement that provides the basis for the change of plea. A plea agreement is entered into by the lawyer for the State, the defendant's lawyer, and the defendant. It lays out the conditions under which the defendant has agreed to plead guilty, after a plea bargaining process between the prosecution and defense lawyers.

The defendant is asked if he has read the agreement, understood it, gone over it with his lawyer and signed it. He is sometimes asked if he is satisfied with his lawyer, and often asked whether he was coerced or bribed in any way into agreeing to plead guilty.

Then the content of the plea agreement is reviewed by the judge verbally. The defendant is told what crime he is pleading guilty to, the range of possible sentences he could receive, and any terms of the plea agreement (such as the dropping of charges or alleged prior felony convictions). Sometimes the sentence itself is fixed as a condition of the plea agreement. Sometimes there are no conditions, and the defendant pleads guilty to the original charge made against him.

The defendant is then informed of his Constitutional right to a jury trial and of the more specific rights associated with the jury trial that are given up when a defendant pleads guilty. He is asked if he understands the rights and/or their loss.

If a formal plea is to be taken, or if the defendant is to be explicitly asked if he admits to having committed the crime he is charged with, such admissions will usually occur at this juncture in the proceeding.

Most commonly the judge will attempt to establish a factual basis for the plea after having informed the defendant of his rights and elicited a general admission. A few judges establish the factual basis before the Constitutional warnings.

Once the judge has determined that the defendant did something that falls within the statutory definition of the crime he is pleading to, he makes his findings, to the effect that the plea has been knowingly and voluntarily made, and that there is a factual basis for the plea.

Those findings are followed by exchanges between the judge and the lawyer to schedule a sentencing date. Finally the judge explains to the defendant that the probation department will be investigating him to acquire information on which to base a decision regarding the sentence the defendant is to receive.

One's overall impression of this proceeding is that the judge asks the defendant a series of Yes-no questions, and if the defendant replies in an acceptable manner, the judge will accept his plea. In fact, however, there is no topic covered in the proceeding that is not handled syntactically in more than one way. Consider, for example, the judge's efforts to make sure that the person named in the plea agreement is really the person standing before him:

- (8)(a) Judge: For the record, you are John Jordan Calliflax?
Defendant: Yes, sir. A2(3)-65
- (b) Judge: Is your full name Allen Lloyd Teasdale, sir?
Defendant: The third. D2(2)-27
- (c) Judge: Thank you. You're Ronald Dean -Gish?
Defendant: Yes sir, your Honor. A2(1)-3
- (d) Judge: Is your true, uh, Joseph A. Larkin, sir? (2 sec.)
I've been handed a document which says 'plea agreement'.
Did you sign this document, sir?
Defendant: Yes. D1(3)-29

As should be evident from the examples in (8), both Yes-no questions and statements with and without question intonations are responded to as if they were Yes-no questions.

At the same time, some parts of the procedure are more variable in form than others, both across judges, and in regard to different instances of the procedure under the same judge. For example, as I have already indicated, not all judges ask the defendants about their backgrounds. Those judges who do not all ask the exact same questions. Nor does a given judge always ask the same questions to every defendant, or always use the same form for the substantive question each time it is asked.

Similarly, at the end of the procedure the judges vary in whether or not and how they admonish the defendant to cooperate in the probation investigation.

By contrast, every judge always mentions exactly the same Constitutional rights in exactly the same order, even if their characterizations of those rights differ. And each judge usually gives an almost identical statement of those rights from one instance of the proceeding before him to another. In examples (9) and (10) the same judge's speech is used to demonstrate that he varies the instructions regarding probation investigation more than the information regarding Constitutional rights, just as the other judges do.

(9)(a) Judge A: Order that a resentencing investigation and report be made by the Adult Probation Office of this court. Now Frederick, it's up to you to cooperate with the Adult Probation Office so that the information I get is the best possible information, uh, to be used in deciding what disposition to make in this case.

A2(2)43-44

(b) Judge A: It's to your definite advantage as well as to mine to cooperate with the Adult Probation Office. Obviously the better the quality of the information I have about you, the more I can (2 sec.) uh (2 sec.) make a sincere effort to uh intelligently decide what to do in this case.....

A2(3)-78

(10)(a) Judge A: Uh, you also would have the right to confront and cross-examine the witnesses the State would have to call to prove your guilt.

Defendant: Yes, sir.

A2(3)-71

(b) Judge A: Uhm - I -- if there were to be a trial then you would have the right to cross-examine and face and confront the witnesses that the State would have to call to prove your guilt, do you realize that?

Defendant: Yeh.

A2(2)-39

For the most part it is the most legally significant portions of the proceeding that vary the least, and the less legally significant portions that vary the most. Thus the inclusion of Constitutional rights has been required by a U.S. Supreme Court decision, and if there is no evidence that the defendant has been informed of those rights at some point, his guilty plea could be reversed and invalidated by an appellate court. There is thus a tendency for the judges to ritualize and standardize this portion of the proceeding so that it is handled in a manner they judge to be acceptable to the higher courts every time the proceeding occurs.

By contrast, the inquiry into the defendant's background that sometimes occurs at the beginning of the procedure has not been found by the higher courts to be information necessary for the judge to determine whether the defendant understands what is happening to him. Other sources of information have been found to provide an acceptable basis for that determination as well. Accordingly, less attention is given by the judges to doing that part of the procedure in a particular manner, and several judges don't do it at all.

Different parts of the procedure also display different frequencies of particular syntactic forms. The section on the defendant's background is marked by the occurrence of Wh-questions whose answer forms are typically closely related to and predictable from the form of the question. "How old are you?" and "How much education have you had?" are examples. That section is usually predominantly a mix of Wh-questions and Yes-no questions that are short and simple, and to which simple, short answers are given.

The initial questions regarding the defendant's comprehension of the plea agreement are largely short Yes-no questions:

(11)(a) Judge: Have you read the plea agreement?

Defendant: Yes, I have.

Judge: Uh, as of now, do you think you understand it?

Defendant: Yes I do. C1(1)-4

(b) Judge: Um, your attorney's handed me a plea agreement purportedly entered into between yourself and the State of Arizona. Have you had a chance to read the plea agreement?

Defendant: Yes, sir. B1(1)-22

The structure of the judges' utterances usually changes notably when they begin to review the material in the plea agreement. The safest way for a judge to make sure the defendant knows certain facts required by statute or held by appellate courts to be necessary for a defendant to knowingly waive his Constitutional rights is to tell him those facts. Consequently this section is a mix of delivery of information and questioning of the defendant's understanding of that information. There is a high representation of more complex statements and questions, followed immediately by short questions containing a deictic element that refers back to everything in the long complex form that has gone before.

(12)(a) Judge: Also, if the Court at the ti- the Court could at the time of entry of judgment of guilt and sentencing, if the Court treated the matter as a misdemeanor, the Court could place you on probation for up to o- up to two years, could fine you up to one thousand dollars or any combination thereof or could place you in the county jail for up to one year. Is that also your understanding?

B1(1)-24

(b) Judge: Do you understand, Mr. Gish, that you are not required to change your plea to guilty at this time, that you are entitled to a trial by jury on the - charges that have been filed against you in this case? (2 sec.) D'you understand that and you'll have to speak up so the /court re/porter will get your answer.

Defendant: /Yes sir/. A2(1)-4

In this Change of Plea data complex questions are almost always followed by a repeat question as in (12)(b). This suggests that complex questions are difficult to mark as questions. The initial syntactic marking may be forgotten by the time the speaker has finished the question. And the

prosodic marking of questions appears to be poorly adapted to the intonation contour of lengthy utterances.

The final substantive section of the Change of Plea, the establishment of the factual basis, is distinguished from other parts of the procedure by the occasional occurrence of very open Wh-questions that do not invite their own structure in the answer. But Yes-no questions predominate in this section and declarative statements also occur. The factual basis will be discussed in more detail later on.

I have tried to suggest the nature of the structure of the Change of Plea, and to indicate the general character of the syntactic variation within the proceeding that all of the judges essentially share. With that background in mind, the variation among the judges to which the discussion now turns should be more readily comprehensible.

There are a number of ways in which judges differ in their handling of the same procedure. As I have already indicated, they differ in the topics they cover in their questioning, although all of the judges cover certain topics. And they differ in the order in which certain topics are covered.

The judges also vary in the length of time they take to go through a change of plea, so that some deliver more information and elicit more information than others. And there is a relationship between the length of the proceeding and the extent of the semantic and syntactic variation within a given judge's various renderings of the same proceeding. In other words, judges whose Changes of Plea are shorter also vary the proceeding less than the judges whose proceedings are generally longer. I did not encounter a judge with a long proceeding that was very much the same in order of topics and forms of utterances each time it is carried out. Nor did I encounter a judge with a short proceeding that is quite different in topics covered, order of topics and form of utterances.

A closer examination of the section of the procedure where the judge establishes a factual basis for the plea will lead us into a consideration of more specific forms of patterned variability.

The establishment of a factual basis for a plea of guilty is the most variable part of the proceeding for all of the judges. Conceptually this part of the procedure is oriented toward the several 'elements' of a crime, as statutorily defined. In order for the judge to find that there is a factual basis for the plea of guilty, there must be evidence

regarding each of the elements of the crime. Thus if a defendant is to be found guilty of possession of marijuana, there must be evidence that he possessed it, that he intended to possess it, that he knew it was marijuana, and that the marijuana was a usable amount.

Although the defendant's attorney and the attorney for the State sometimes make important verbal contributions to the establishment of the factual basis, it is usually established through dialogue between the judge and the defendant, and it is here that the choice of form of question used significantly effects the type of factual basis established.

The form of question used most in eliciting a factual basis from the defendant is the Yes-no question. There is considerable variation in the kind of Yes-no question asked. Most notably there is semantic variation in the extent to which the language in which the questions are cast is statutory rather than factual.

(13)(a) Judge: 'N on or about the fourth day of July, 1978, did you have in your possession marijuana?

Defendant: Yes, sir.

Judge: And did you know it to be marijuana?

Defendant: Yes, sir. B1(1)27

(13)(b) Judge: OK. November twenty-four, nineteen seventy-seven, you did, have in your possession, marijuana. Right?

Defendant: Yes sir.

Judge: And, and you at least you had a substance that you could see and feel and touch, and you thought it was marijuana. Right?

Defendant: Uh. C2(1)-17

(c) Judge: Well, it appears to me from reading the uh transcript of the testimony of the witness who appeared before the Grand Jury, that, uh, you, uh, men were roommates, uh, or in the same apartment, that, uh you uh had some marijuana present in the apartment, uh-- at least some uh (2 sec.) resin,.....Is that what happened?

Defendant: Yes, sir.

C1(1)-7

In the examples in (13), each of the three judges is establishing a factual basis for the crime of possession of marijuana. Going through the three examples in order, the language of the characterization becomes increasingly less statutory, and increasingly more factual. There is a tendency for the defendant to contribute more verbally to the account and to resist agreeing with the judge's account, as the language becomes more factual. Thus in 13(b) the defendant is in fact just beginning to hesitate to agree to the characterization given by the judge at the end of the excerpt. Such hesitation or negative response can lead the judge into a guessing game:

(14) Judge: OK. All right. It was in your vehicle?

Defendant: Uhh/hh/

Judge: In /a/ vehicle/.

Defendant: /It was/ in a vehicle. C2(1)-17-18

Some judges use mainly Yes-no questions, with an occasional statement followed by a short question with a deictic element, as in (13)(b) and (c). Other judges are distinguished by the use of an occasional Wh-question, or an imperative with a Wh form included, most often at the beginning of their efforts to establish a factual basis:

(15)(a) Judge: And--you were intoxicated at the time? OK.
When was your license revoked, sir? (3 sec.)

Defendant: About--three to four months before that.

Judge: OK. And--ho'how intoxicated--you say you were intoxicated. Tell me why you say you were intoxicated.

Defendant: Well they said I was intoxicated. I had, uh-- two-- two, a double shot of uh (2 sec.) bourbon---and three beers.

D1(3)-37-38

(b) Judge: What did you do, hit somebody?

Defendant: Yes, I struck a man.

Judge: With your fist?

Defendant: Yes, sir.

Judge: OK, did you know him?

Defendant: No, sir. C1(2)-38-39

(c) Judge: All right. Tell me what happened then on November first concerning this property.

Defendant: We were at his house in 'u'early in' early in the day, 'n - and then h'he left with some other f'you know friends and--

Judge: His house? We're speaking of who?

Defendant: Uhm, where I got the bag. (4 sec.)
G1(2)-22

As should be apparent from the examples in (15), when compared with the examples in (13) of factual bases elicited with Yes-no questions, Wh-questions clearly elicit more talk from the defendant than Yes-no questions. Moreover, once a Wh-question has been asked, the defendant also volunteers more talk in response to Yes-no questions. In addition, the judge-prompted speech from the defendant in turn provides a new syntactic form to which the judge may then link further elliptical questions, like "with your fist?" and "His house?" By comparison, in the Yes-no sequences, the judge usually has only his own previous utterances to build on in the next question. And while there may be considerable substitution, as where pronouns replace nouns that appeared in an earlier question, there is very little ellipsis in the judge's speech in Yes-no sequences.

In general, then, the choice of question form made by the judge, and more specifically the presence or absence of relatively non-structuring Wh-elements in a judge's speech has considerable patterned and predictable effect on the sequential structure of the discourse that follows.

The choice between a factual basis that is more fully provided by the defendant and a factual basis to which the defendant assents is consciously made by at least some of the judges, and each judge usually uses the same approach to eliciting the factual basis with different defendants.

Some of the judges have articulated their reasons for either getting the defendant to provide the facts, or merely getting the defendant to assent to a factual basis. If a defendant is required to provide the information, and thereby more actively make admissions, or confess, then he is more likely to stand by his plea, and less likely to attempt to appeal the Change of Plea at a later time, should he be unhappy with the sentence he is given. In addition, elicitation of the facts from the defendant increases the likelihood that the defendant is knowingly and voluntarily pleading guilty to the crime with which he is charged.

On the other hand, elicitation from the defendant is often a messy process. It takes longer, because defendants in fact do not like to actively make admissions, and they often do not know the elements of a crime, so they are not properly selective in the facts they bring forth. Thus, if a factual basis is to successfully cover all elements of the crime, the judge must often come into the defendant's account with Yes-no questions in the end anyway.

Perhaps a more important reason for merely eliciting assent from the defendant is that such assent is all that is legally necessary for a voluntary and knowing plea. And the defendant may have all kinds of good reasons for not wishing to make admissions. He may be reluctant to confess to heinous acts in the presence of people he knows in the court. He may have gone through a plea bargaining process so that the crime he is pleading guilty to really bears very little essential relationship to what he was originally arrested for.

Thus, while the choice of one question form over another may not be conscious, the type of factual basis that results from one tactic rather than the other may have been quite deliberately intended by the judge.

There may also be other more general factors that account for the different questioning styles used by the judges. There is a tendency for the judges who use Wh-questions to be younger, on the bench for a shorter time, and of a different generation than the judges who rely exclusively on Yes-no questions in eliciting the factual basis. Those judges who rely exclusively on Yes-no questions in eliciting the factual basis also tend to have generally more variable and lengthy changes of

plea, so that the greater variability in the factual basis is matched by variability in the procedure as a whole.

The younger judges are less likely to have routinized their procedures in that they are still exploring alternative approaches to their judicial tasks. They may also still be capable of taking an interest in the problematic nature of the fit between factual circumstances and statutory interpretation.

Thus, the syntactic variation identified in the question forms used by judges in establishing a factual basis can potentially be correlated with both general social dimensions (e.g. age, length of time on job) and dimensions that are specific to the particular institutional context (in this case legal) in which individuals are engaged in interaction.

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